STATE OF MICHIGAN

COURT OF APPEALS

DAVID E. BLOCH, Plaintiff-Appellant,	UNPUBLISHED April 26, 2011
v	No. 296003 Genesee Circuit Court
DAVISON COMMUNITY SCHOOLS, Defendant-Appellee.	LC No. 09-092110-CZ

Before: BECKERING, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

Plaintiff David Bloch appeals as of right from the trial court order granting defendant Davison Community Schools' motion for summary disposition in this dispute over defendant's demand for payment of labor costs for responding to plaintiff's Freedom of Information Act request. We affirm.

I. FACTUAL BACKGROUND

As this Court explained, in a previous related case between these parties:

> In the spring of 2008, plaintiff made requests for numerous documents from defendant under the Freedom of Information Act (FOIA), MCL 15.231, *et seq*. Among other documents, plaintiff asked for copies of four reports someone at Davison Central Elementary School made to Child Protective Services (CPS) about alleged sexual abuse by plaintiff involving his daughter, who was enrolled as a second-grader at the school. Defendant's FOIA officer declined to give plaintiff the reports sent to CPS, citing the Child Protection Law (CPL), MCL 722.625, and an exemption under FOIA, MCL 15.243(1)(b)(iv). Plaintiff appealed the decision to defendant's superintendent, who ultimately sent plaintiff the documents, but redacted all of the text from each one. Thereafter, plaintiff filed a complaint and asked the court to order defendant to disclose his requested documents.
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> Defendant filed a motion for summary disposition under MCR 2.116(C)(8) and (C)(10) and argued that plaintiff may not have the reports defendant's employee sent to CPS because they are exempt from disclosure under FOIA. Specifically, defendant argued that because the CPL states that the names

> of mandatory reporters of suspected child abuse must be kept confidential, and because the reports are handwritten and in a narrative form that would identify the reporter, the documents are exempt from disclosure under MCL 15.243(1)(b)(iv). Defendant further asserted that, under MCL 15.243(1)(l) of FOIA, counseling facts or evaluations of a person may not be disclosed "if the individual's identity would be revealed by a disclosure of those facts or evaluation." Because the reports relate to the counseling of a child and contain information that would readily identify plaintiff's daughter, defendant argued that plaintiff, as a member of the public, may not obtain disclosure of the documents. Defendant further argued that disclosing documents that would reveal the identity of a reporter of suspected child abuse would have a chilling effect on those who are required to convey allegations of suspected child abuse to CPS.
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> In response, plaintiff argued that defendant's employees did not act in good faith when they reported suspected child abuse of his daughter to CPS and that this precludes application of the confidential source exemption under FOIA. He further argued that defendant should have typed the documents and redacted only the information that would reveal the identity of the child and the reporter. Plaintiff emphasized that his requested disclosure would not be to the "public," but would be made privately to him. He also made various factual allegations about the conduct of individual school employees and their relationship with his ex-wife, with whom he was engaged in acrimonious divorce proceedings. [*Bloch v Davison Community Schools*, unpublished opinion per curiam of the Court of Appeals, issued July 29, 2010 (Docket No. 290709) (footnote omitted).]

On February 23, 2009, the trial court, with Judge Joseph Farah presiding, granted defendant's motion for summary disposition in this prior case, concluding that the CPS reports were exempt from disclosure. On March 4, 2009, plaintiff filed his claim of appeal in this Court, and on July 29, 2010, this Court affirmed the trial court's grant of summary disposition in favor of defendant. *Id.*

On April 30, 2009, while the first case was pending before this Court, plaintiff submitted a second FOIA request to defendant, seeking all invoices or requests for payments from any attorney or law firm received or paid by defendant, and all contracts for legal services signed by defendant and any attorney or law firm, for the time period from January 1, 2006 to May 1, 2009. Defendant's FOIA officer informed defendant that responding to his request would require an "intensive search" of defendant's records, resulting in estimated costs to defendant of $119.67. Defendant's published policy regarding the imposition of fees and costs for responding to FOIA requests provides, in part, that defendant will charge "[l]abor cost for search examination, review and deletion or separation of exempt information, at the hourly wage of the lowest paid employee of the District capable of complying with the request," but "only when the request requires more than $50 of labor." Additionally, defendant's policy exempts the first $25 of fees incurred by any person or entity for FOIA requests submitted each school fiscal year. Accordingly, defendant's FOIA officer informed plaintiff that he would be charged for the cost of responding to his request, less the remaining amount of his $25 credit for the fiscal year. Defendant's FOIA officer further advised plaintiff that, as permitted by MCL 15.234(2), he was required to pay a deposit of $50.29 before it would begin processing his request. Plaintiff

unsuccessfully appealed the assessment of the fees to defendant's Board of Education. Thereafter, plaintiff filed the instant action, asserting that defendant's actions in charging him a fee for responding to his FOIA requests violated MCL 15.234(1) and (3).

II. TRIAL COURT PROCEEDINGS

Upon its filing, plaintiff's action was assigned to Judge Geoffrey Nethercut. Defendant moved to reassign the case to Judge Farah on the basis that there was already an action pending between the parties before Judge Farah, inasmuch as this Court had yet to decide plaintiff's appeal from the earlier action filed by plaintiff to obtain the CPS reports. Defendant asserted further that the instant action was an attempt by plaintiff to obtain discovery of material relevant to the first action between the parties, in contravention of a protective order entered by Judge Farah in that case. Plaintiff opposed the motion, asserting that the two actions involved entirely distinct transactions and occurrences. Consequently, plaintiff asserted, there was no basis for reassigning the case to Judge Farah.

Following a hearing, Judge Nethercut concluded that the subject matter of the instant action was "so close" to that of the first action that the case should be heard by Judge Farah. Accordingly, Judge Nethercut granted defendant's motion for reassignment. Thereafter, plaintiff moved to disqualify Judge Farah on the basis that the judge had exhibited "deep-seated" bias and prejudice against him in the earlier case, which would "make fair judgment by Judge Farah in this case impossible." Judge Farah denied plaintiff's motion, observing that the only bases asserted for disqualification were the judge's decision to limit oral argument on a fully-briefed legal issue, together with legal rulings in favor of defendant. Judge Farah noted that he had considered, and based his decisions on, the pleadings and attached exhibits filed by the parties in the first case, and that plaintiff had a right to appeal those rulings, which "had nothing to do with any personal animus or prejudice" toward plaintiff. Plaintiff then moved the chief judge to disqualify Judge Farah from hearing this action. That motion was likewise denied, with the chief judge observing that it was "blatantly obvious" that Judge Farah was not biased and should not be disqualified from hearing this action.

The question of which judge would preside over the case decided, defendant moved for summary disposition, pursuant to MCR 2.116(C)(8) and (10), asserting that Section 4 of the FOIA, MCL 15.234, permits it to charge the fees sought from plaintiff. The trial court agreed, over plaintiff's objection, and granted defendant's motion. This appeal followed.

III. STANDARD OF REVIEW

This Court reviews questions of statutory interpretation and the proper application of statutes de novo. *Coblentz v City of Novi*, 475 Mich 558, 566; 719 NW2d 73 (2006); *Adams Outdoor Advertising, Inc v City of Holland*, 463 Mich 675, 681; 625 NW2d 377 (2001). This Court also reviews a trial court's decision to grant or deny a motion for summary disposition de novo. *Coblentz*, 475 Mich at 567; *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The interpretation and application of court rules presents a question of law reviewed de novo on appeal. *Nat'l Waterworks, Inc v International Fidelity & Surety, Ltd*, 275 Mich App 256, 258; 739 NW2d 121 (2007). Finally, the factual findings underlying a ruling on a motion for disqualification are reviewed for an abuse of discretion, while application of the

facts to the law is reviewed de novo. *Cain v Dep't of Corrections*, 451 Mich 470, 503 and n 38; 548 NW2d 210 (1996); *In re Contempt of Henry*, 282 Mich App 656, 679; 765 NW2d 44 (2009). An abuse of discretion occurs when a decision is outside the range of reasonable and principled outcomes. *In re MKK*, 286 Mich App 546, 564; 781 NW2d 132 (2009).

IV. ANALYSIS

A. DEFENDANT'S ASSESSMENT OF A FEE FOR RESPONDING TO PLAINTIFF'S FOIA REQUEST

MCL 15.234 governs the computations of costs for responding to FOIA requests. It provides:

> (1) *A public body may charge a fee for a public record search, the necessary copying of a public record for inspection, or for providing a copy of a public record. Subject to subsections (3) and (4), the fee shall be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information* as provided in section 14 [MCL 15.244]. A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge if the public body determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public. A public record search shall be made and a copy of a public record shall be furnished without charge for the first $20.00 of the fee for each request to an individual who is entitled to information under this act and who submits an affidavit stating that the individual is then receiving public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency.
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> (2) A public body may require at the time a request is made a good faith deposit from the person requesting the public record or series of public records, if the fee authorized under this section exceeds $50.00. The deposit shall not exceed 1/2 of the total fee.
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> (3) *In calculating the cost of labor incurred in duplication and mailing and the cost of examination, review, separation, and deletion under subsection (1), a public body may not charge more than the hourly wage of the lowest paid public body employee capable of retrieving the information necessary to comply with a request under this act.* Fees shall be uniform and not dependent upon the identity of the requesting person. A public body shall utilize the most economical means available for making copies of public records. A fee shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14 unless failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs. A public body

shall establish and publish procedures and guidelines to implement this subsection.

(4) This section does not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or if the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute. [Emphasis added.]

Plaintiff argues that the trial court erred by concluding that defendant was permitted to charge him for labor costs attributable to having its own employees process a FOIA request during normal business hours. Plaintiff contends that such costs do not constitute "actual costs" under the FOIA, because no additional payment is being required of defendant. Plaintiff asserts that the trial court further erred by concluding that the cost of processing plaintiff's request, estimated to be $119.67, was "unreasonably high" within the meaning of the FOIA, thus permitting defendant to charge a fee to plaintiff. We disagree.

The primary goal of statutory interpretation is to give effect to the intent of the Legislature. *Dep't of Agriculture v Appletree Marketing, LLC*, 485 Mich 1, 8; 779 NW2d 237 (2010). Courts faced with questions of statutory interpretation and application begin with the language of the statute. *United States Fidelity Ins & Guaranty Co v Mich Catastrophic Claims Ass'n (On Rehearing)*, 484 Mich 1, 13; 773 NW2d 243 (2009). If the language of the statute is clear and unambiguous, the Legislature is assumed to have intended the meaning clearly expressed and the statute must be enforced as written. *Id.* Further, the Legislature is presumed to have included each word in a statute for a purpose, and thus, effect is to be given to every clause. *Priority Health v Comm'r of the Office of Fin & Ins Servs*, 284 Mich App 40, 45; 770 NW2d 457 (2009). A construction of a statutory provision that would render any language included therein a nullity should be avoided. *Detroit City Council v Mayor of Detroit*, 283 Mich App 442, 451; 770 NW2d 117 (2009).

As our Supreme Court confirmed in *Coblentz*, 475 Mich at 577-578, a public body may charge a fee for providing a copy of a public record, including labor costs at no more than the rate of the hourly wage of the lowest paid public body employee capable of retrieving the information necessary to comply with the FOIA request. MCL 15.234(3); *Coblentz*, 475 Mich at 577-578; see also, *Grebner v Clinton Twp*, 216 Mich App 736, 740; 550 NW2d 265 (1996) (observing that the fee that may be charged by a public body for responding to a FOIA request is set forth in MCL 15.234, which permits such charge for incremental costs, including labor costs, at the rate of the hourly wage of the lowest paid public body employee capable of responding to the request).[1] There is no dispute here that the labor costs defendant sought to impose on

[1] Additionally, although the FOIA does not specifically provide for the imposition of fees to view records, a reasonable charge for viewing records may be assessed when necessary to prevent excessive and unreasonable interference with the discharge of the public body's function. *Cashel v Regents of the Univ of Mich*, 141 Mich App 541, 549-550; 367 NW2d 841 (1985).

plaintiff were calculated based upon the work of defendant's own employees in retrieving, separating, reviewing and redacting the documents responsive to plaintiff's FOIA request. Pursuant to MCL 15.234(1) and (3) and to *Coblentz*, 475 Mich at 578, 580, defendant was permitted to charge for these costs at the rate of the hourly wage of its lowest paid employee capable of responding to plaintiff's FOIA request. Plaintiff does not dispute that defendant has assessed its fee at such rate. Instead, plaintiff argues that a public body only incurs actual costs for labor if it either uses its own employees during non-business hours, on a "for pay overtime" basis, or it hires non-employees to accomplish the FOIA work. However, as our Supreme Court made clear in *Coblentz*, 475 Mich at 577, a public body cannot charge a fee for labor costs if an independent contractor responds to a FOIA request. Further, payment of overtime to an employee would not constitute the rate of the lowest paid public employee capable of responding, as required by the FOIA. Thus, plaintiff's assertion in this regard plainly lacks merit.

As our Supreme Court has recognized, a public body may charge for labor costs attributable to having its own employees respond to a FOIA request. *Coblentz* 475 Mich at 578, 580. Plaintiff has presented this Court with no countervailing authority. And, the FOIA plainly provides for such a charge. MCL 15.234(1), (3). Therefore, the trial court did not err by concluding that defendant could charge plaintiff for the labor costs incurred in responding to his FOIA request at a rate up to the hourly wage of the lowest paid public body employee capable of retrieving, separating, reviewing and redacting the information necessary to comply with that request.

Further, we conclude that, contrary to plaintiff's assertion otherwise, the $120 in costs defendant seeks to charge plaintiff in responding to his request constitutes an "unreasonably high cost" to defendant within the meaning of the FOIA. Plaintiff asserts that to be chargeable under MCL 15.234(3), the costs of responding to a FOIA request must be "unreasonably high" *when compared to the public body's operating budget and overall financial condition*. Plaintiff complains that neither the $50 specified in defendant's policy, nor the $120 in costs specifically at issue here, meet the threshold permitting defendant to impose a charge considering the size of defendant's operating budget.

There are no cases from this Court or from our Supreme Court discussing the manner in which it is to be determined whether costs incurred in responding to a FOIA request are "unreasonably high" within the meaning of MCL 15.234(3). However, considering the plain language of the statute, *United States Fidelity Ins & Guaranty Co*, 484 Mich 13, and giving effect to each word and every clause included in the statute, *Priority Health*, 284 Mich App 45; *Detroit City Council*, 283 Mich App 451, we conclude that MCL 15.234(3) contemplates that this determination be made relative to the usual or typical costs incurred by the public body in responding to FOIA requests. MCL 15.234(3) speaks of "unreasonably high costs to the public body" specifically because of the nature of the request in the particular instance. Thus, the key factor in determining whether the costs are "unreasonably high" is the extent to which the particular request differs from the usual request. Conversely, nothing in the language of MCL 15.234(3) suggests that the determination of whether the costs incurred are "unreasonably high" is to be determined according to the public body's operating budget.

In support of his position, plaintiff first points to *Detroit Free Press v Attorney General*, 271 Mich App 418, 420; 722 NW2d 277 (2006), in which the trial court held that the Attorney General failed to show that not charging the plaintiff a $60 labor fee for responding to its FOIA request would result in unreasonably high labor costs to the Attorney General. The plaintiff appealed the trial court's denial of its motion for attorney fees and costs; the Attorney General did not cross-appeal the trial court's determination regarding the $60 in labor costs. Thus, this Court did not address that issue in any manner pertinent here. And, there was no determination made in that case that $60 in labor costs was *not* unreasonably high; only that the Attorney General did not show that it was unreasonably high.

Plaintiff also points to *Cashel v Regents of the Univ of Mich*, 141 Mich App 541; 367 NW2d 841 (1985), as supporting a finding that the $120 in labor costs at issue here are not unreasonably high within the meaning of MCL 15.234(3). In *Cashel*, the plaintiff sought to examine and make notes regarding voluminous records, all of which were available only on microfilm, and thus, could not be viewed by the plaintiff without a university representative present. *Id.* at 543-544. The plaintiff advised the court that she would need two to three months to review the documents. The trial court determined that this would cause the defendant to incur "an unusual cost," and instead, it ordered the defendant to provide the plaintiff with two weeks of supervised access to the records at no charge and that the plaintiff be assessed labor costs for any supervised access time beyond the initial two-week period. *Id*. at 545-546. The plaintiff appealed, challenging the trial court's authority to impose any charge for the review (as opposed to the copying) of public documents. *Id*. at 546. This Court concluded that the trial court's amended judgment provided the plaintiff with a reasonable opportunity to examine the defendant's records, while at the same time "preventing undue interference with the day-to-day operations of the university." *Id.* at 550. Therefore, the Court held that the trial court did not abuse its discretion by "[l]imiting [the] plaintiff to use of [the defendant's] viewing and copying equipment, personnel, and office space for two weeks free of charge." *Id*. at 549-550. The Court further concluded that the trial court's order permitting the defendant to have a staff member present during the plaintiff's examination of the records did not amount to an abuse of discretion, considering that the records requested were on microfilm, which constituted "the only remaining copies of original records." *Id*.

Plaintiff observes that while the plaintiff in *Cashel* was afforded 80 hours of public body employee time without charge, defendant is not affording him any free employee time in responding to his request. However, there is no indication as to how the costs incurred by the defendant in *Cashel* in providing the plaintiff with 80 hours of supervised access to the documents sought compared to the defendant's usual cost of responding to FOIA requests. And, simply because this Court concluded that the trial court did not abuse its discretion under the circumstances presented in *Cashel*, does not mean that it is unreasonable for defendant to charge for labor costs under the circumstances presented here.

As previously stated, the phrase "unreasonably high costs" as used in MCL 15.234(3) prohibits a public body from charging a fee for the costs of search, examination, review, and deletion and separation of exempt from nonexempt information, unless the costs incurred by a public body in the particular instance would be excessive and beyond the normal or usual amount for those services. Plaintiff's own filings demonstrate that the costs to defendant of responding to plaintiff's instant FOIA request was more than the costs incurred in responding to

all FOIA requests for the entire 2007/2008 school year. Defendant's letters to plaintiff detailed the circumstances, particular to his request, resulting in costs of response exceeding those typically incurred by defendant, including the labor intensive retrieval and review process necessitated by the nature of that request. This was sufficient to permit the trial court to conclude that the costs were properly assessable.

Additionally, plaintiff takes issue with defendant's stated policy of charging for FOIA requests requiring more than $50 of labor. Plaintiff points to this Court's decision *Tallman v Cheboygan Area Schools*, 183 Mich App 123, 130; 454 NW2d 171 (1990), as warranting invalidation of defendant's policy. At issue in *Tallman* was the question whether the price set by the defendant for copies, being $1 per page for the first 20 pages, $0.50 for each of the next 20 pages and $0.20 for each additional page thereafter, comported with the FOIA. The trial court found the charges to be "reasonable," and noted that "the charge under the FOIA statute was more expensive to the [defendant] and to the person requesting copies than the charge based on the average that the [defendant] used." *Id.* at 125, 129. However, this Court concluded that the pricing policy did not comport with the FOIA, explaining that:

> defendant school board may not establish for itself what to charge, nor may the court exempt defendant from charging in any fashion other than that established by the Legislature. A public body is not at liberty to simply "choose" how much it will charge for records. To permit such action would effectively allow the public body to override the directive of the Legislature. It should be remembered that under the FOIA statute the public body may, but is not *required*, to charge for the copying of public records.
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> The FOIA clearly provides a method for determining the charge for records. It is incumbent on a public body, if it chooses to exercise its legislatively granted right to charge a fee for providing a copy of a public record, to comply with the legislative directive on how to charge. The statute contemplates only a reimbursement to the public body for the cost incurred in honoring a given request-nothing more, nothing less. If the statutorily computed charge is $1 per page for the request, then $1 per page may be charged. However, if the computed charge is $0.09 per page, no more can be charged, regardless of the ease of application of a "policy" or the difficulty in determining the legislatively mandated computation. Similarly, if the appropriate charge for a given request is $10 per page, the legislative scheme does not provide that a less costly request should subsidize the more expensive request through an adopted "policy" of the school board to charge a flat amount per page to produce appropriate information. [*Id.* at 129-130.]

The policy at issue in *Tallman* did not base the cost charged for copies on the actual cost incurred by the defendant. Thus, the policy – setting prices for ease of computation, and on a descending scale – did not comport with the FOIA. Such is not the case here.

MCL 15.234(3) mandates that a public body "establish and publish procedures and guidelines to implement this subsection." Defendant's policy assesses cost for copying and mailing based on the actual costs incurred by defendant in responding, and it sets labor costs at

the rate of its lowest paid employee(s) capable of responding to the request. Thus, defendant here has "compl[ied] with the legislative directive on how to charge" for responding to FOIA requests. *Tallman*, 183 Mich App at 130. Accordingly, plaintiff's challenge to the existence and content of defendant's policy is without merit.

B. REASSIGNMENT TO JUDGE FARAH AND THE DENIALS OF PLAINTIFF'S MOTIONS FOR DISQUALIFICATION

Plaintiff argues that the trial court erred by reassigning this case to Judge Farah, because it arises out of entirely separate events and transactions than the earlier case between the parties, and it presents distinct legal issues unrelated to the issues raised in the first action. Plaintiff further argues that this error was compounded when the trial court denied his motions to disqualify Judge Farah. We find no error requiring reversal.

MCR 8.111(D) provides in pertinent part:

> (1) [I]f one of two or more actions arising out of the same transaction or occurrence has been assigned to a judge, the other action or actions must be assigned to that judge;
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> (2) if an action arises out of the same transaction or occurrence as a civil action previously dismissed or transferred, the action must be assigned to the judge to whom the earlier action was assigned[.]

As this Court has explained, "[a]ctions arise from the same transaction or occurrence only if each arises from the identical events leading to the other action." *Kloian v Schwartz*, 272 Mich App 232, 243; 725 NW2d 671 (2006); *Wayne Co Prosecutor v Parole Bd*, 210 Mich App 148, 156; 532 NW2d 899 (1995). Plaintiff argues that the instant action, regarding charges for documents sought by a separate FOIA request filed a year after the first, does not arise from the "identical events leading to" the first action. Plaintiff notes that the events leading up to the first action were defendant's refusal to disclose to him, upon his request in the spring of 2008, four reports made to CPS about alleged sexual abuse by plaintiff involving his daughter, while the instant action arises from defendant's imposition of a fee to respond to a subsequent FOIA request for all invoices from any attorney or law firm from January 1, 2006 to May 1, 2009.

Strictly speaking, it does not appear that the instant action arose from the "identical events" leading to plaintiff's first action against defendant. Even still, however, reversal of Judge Farah's order granting summary disposition to defendant is not warranted because plaintiff has not established that the action was reassigned due to any impermissible considerations by Judge Nethercut, *Armco Steel Corp v Dep't of Treasury*, 111 Mich App 426, 439; 315 NW2d 158 (1981), aff'd, 419 Mich 582; 358 NW2d 839 (1984), or that he was prejudiced in any way by the reassignment, *Nat'l Waterworks*, 275 Mich App at 261; see also *People v McCline*, 442 Mich 127, 128, 134; 499 NW2d 341 (1993) (reversal not warranted where the defendant has demonstrated no prejudice resulting from substitution of the judge).

Further, we find no error in the trial court's decisions denying plaintiff's motions to disqualify Judge Farah from presiding over the instant claims. The grounds and procedure for the disqualification of a judge are set forth in MCR 2.003. *In re MKK*, 286 Mich App 546, 564;

781 NW2d 132 (2009); *People v Bettistea*, 173 Mich App 106, 123; 434 NW2d 138 (1988). Pursuant to MCR 2.003(C)(1), disqualification of a judge is warranted when he cannot impartially hear a case, which includes when he is biased or prejudiced for or against a party or attorney, when he has a serious risk of actual bias or has failed to adhere to the appearance of impropriety standard of the Michigan Code of Judicial Conduct, when he has personal knowledge of disputed facts, when he has been involved in the case as a lawyer, when he was a partner of a party or lawyer within the preceding two years, when he knows that he or a relative has an economic interest in the matter in controversy that could be substantially impacted by the proceeding, when he or a relative is a party or party principal, when he or a relative is acting as counsel in the proceeding, or when he or a relative is likely to be a material witness in the proceeding. MCR 2.003(C)(1); *Coble v Green*, 271 Mich App 382, 390; 722 NW2d 898 (2006); *In re MKK*, 286 Mich App 546, 565; 781 NW2d 132 (2009); *Armstrong v Ypsilanti Twp*, 248 Mich App 573, 596; 640 NW2d 321 (2001). Conversely, disqualification based on bias or prejudice cannot be established merely by repeated rulings against a litigant, even if the rulings are erroneous. *In re Contempt of Henry*, 282 Mich App at 680; Armstrong *v Ypsilanti Twp*, 248 Mich App 573, 597; 640 NW2d 321 (2001).

Plaintiff's assertions that Judge Farah displayed deep-seated bias against him and deep-seated favoritism toward defendant are based entirely in Judge Farah's legal rulings in the first case between the parties. Plaintiff takes issue with Judge Farah's failure to consider certain exhibits as sufficient to warrant a ruling in plaintiff's favor and he objects to Judge Farah's curtailing of oral argument, while acknowledging that defendant's opportunity for oral argument was equally curtailed. Plaintiff asserts that Judge Farah's comment near the conclusion of the hearing on defendant's summary disposition motion in the first case that, "I just don't think they did anything wrong and I think that's the end of it, okay?" was a warning to him not to pursue additional litigation, and that the comment that "that's the best I can do for you" was an admission of "his limitations." Contrary to plaintiff's assertions however, we do not find any demonstration of bias or prejudice in Judge Farah's comments. These comments do not indicate any warning to plaintiff to not pursue the matter further, especially considering that Judge Farah repeatedly referred to plaintiff's right to appeal to this Court. Nor do the comments indicate in any way that Judge Farah was limited or affected by bias or prejudice against plaintiff. Therefore, the lower court did not err in declining to disqualify Judge Farah from the instant action.

Affirmed.

/s/ Jane M. Beckering
/s/ William C. Whitbeck
/s/ Michael J. Kelly